

IN THE COURT OF COMMON PLEAS
CIVIL DIVISION
HAMILTON COUNTY, OHIO

GARY PRUIETT, *et al.*

Plaintiffs,

v.

VILLAGE OF ELMWOOD PLACE, *et al.*,

Defendants.

Case No. A1209235

Judge Ruehlman

MOTION FOR LEAVE TO FILE FIRST
AMENDED CLASS ACTION
COMPLAINT FOR DECLARATORY
JUDGMENT, INJUNCTIVE RELIEF
(INCLUDING TEMPORARY
RESTRANDING ORDER), AND
EQUITABLE RESTITUTION, WITH
JURY DEMAND ENDORSED
THEREON; MEMORANDUM IN
SUPPORT

Pursuant to Civil Rules 15(A) and (E), 18(A) and (B), and 20(A), plaintiffs hereby move for leave to file the attached First Amended Class Action Complaint for Declaratory Judgment, Injunctive Relief (Including Temporary Restraining Order), and Equitable Restitution, With Jury Demand Endorsed Thereon. The grounds for this Motion are set forth below in the Memorandum in Support.

MEMORANDUM IN SUPPORT

Civil Rule 15(A) provides that leave of court to amend a complaint "shall be freely given when justice so requires." Civil Rule 15(E) provides, "Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." Civil Rule 18(A) permits a plaintiff to "join, either

as independent or as alternate claims, as many claims, legal or equitable, as he has against an opposing party.” Civil Rule 18(E) provides, in pertinent part, “Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action” Civil Rule 20(A) provides, in pertinent part, “All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or succession or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action.... A plaintiff ... need not be interested in obtaining ... all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief”

The attached pleading seeks to add the following: Michael Cutcher as a named plaintiff and representative of the proposed Plaintiff Class; class allegations supporting the proposed Plaintiff Class; and Count V, which seeks equitable restitution of all penalties, fees and charges paid based on unjust enrichment, on behalf of plaintiff Cutcher and the members of the proposed Plaintiff Class.

Since the filing of this action, the Village of Elmwood Place has continued to operate its Automated Speed Enforcement Program. Indeed, evidence suggests that the Village has continued operating this program *despite* this Court’s order enjoining it. While this conduct would warrant contempt, affording full protection to those harmed or to be harmed by this illegal and unconstitutional program requires the creation of a Plaintiff Class within which would fall all persons who have paid penalties and other fees and charges under this program. The proposed Plaintiff Class would therefore include (1) all persons who paid such penalties, fees, or charges *before* the filing of this action, (2) all persons who have paid such penalties, fees, or charges

since the filing of this action, and (3) all other persons who pay such penalties, fees, or charges *hereafter*, until entry of final judgment in this action.

Permitting these amendments is in the interest of justice, fully consonant with Civil Rules 15(A) and (E), 18(A) and (B), and 20(A), and necessary to protect and preserve all claims of individuals unjustly harmed by the Village's illegal and unconstitutional Automated Speed Enforcement Program.

For the foregoing reasons, plaintiffs respectfully request that leave to file the attached pleading be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon Anita Vizedom, Attorney for Defendants, 6118 Vine Street, Cincinnati, Ohio 45216 via email and regular mail on the same date as said pleading was filed with the court.



Michael K. Allen (0025214)
Michael K. Allen & Associates

**IN THE COURT OF COMMON PLEAS
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COMPLAINT FOR DECLARATORY
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INTRODUCTION

1. Plaintiffs bring this action for a declaratory judgment, equitable restitution, temporary restraining order, and injunctive relief. This case arises out of the operation of the Automated Speed Enforcement Program in the Village of Elmwood Place. The Automated Speed Enforcement Program was established by Ordinance 9-12 adopted by Village Council on July 10, 2012. The Ordinance is invalid and unenforceable because the municipality failed to comply with the statutory requirements.

PARTIES

2. The following Plaintiffs bring this Complaint and have completed sworn affidavits attached hereto verifying the allegations herein:

- a. Plaintiff Gary Pruiett is an Ohio resident with a residence at 7298 Shady Hollow, West Chester, Ohio 45069.

- b. Plaintiff Linda Pruiett is an Ohio resident with a residence at 7298 Shady Hollow, West Chester, Ohio 45069.
- c. Plaintiff Jannia Warren is an Ohio resident with a residence at 2033 Innes Avenue, Cincinnati, Ohio 45224.
- d. Plaintiff Marja Fernandez is an Ohio resident with a residence at 36 Camargo Canyon, Cincinnati, Ohio 45253.
- e. Plaintiff Craig Coburn is an Ohio resident with a residence at 7983 Bear Creek, Cincinnati, Ohio 45249.
- f. Plaintiff Theresa E. Eppstein is an Ohio resident with a residence at 509 Lombardy Street, Cincinnati, Ohio 45216.
- g. Plaintiff Our Lady of Lavang Vietnamese Catholic Community Church is a place of worship located in Elmwood Place, Ohio at 314 Township Avenue, Cincinnati, Ohio 45216.
- h. Plaintiff Rev. Chau M. Pham, S.V.D. is employed by Our Lady of Lavang Vietnamese Catholic Community Church at 314 Township Avenue, Cincinnati, Ohio 45216.
- i. Plaintiff David Downs is an Ohio resident and business owner with a business located at 5560 Vine Street, Cincinnati, Ohio 45216.
- j. Plaintiff St. Bernard Polishing Company is a business located at 5560 Vine Street, Cincinnati, Ohio 45216.
- k. Plaintiff Michael Cutcher is an Ohio resident with a residence at 3834 Settle Road, Cincinnati, Ohio 45227.

3. Defendant Village of Elmwood Place is an Ohio municipality with a principal location at 6118 Vine Street, Elmwood Place, Ohio 45216.
4. Defendant William Peskin is the Police Chief of Village Of Elmwood Place. He has a principal place of business at 6118 Vine Street, Elmwood Place, Ohio 45216.
 - a. Defendant Peskin is sued in his official capacity.
 - b. Defendant Peskin is responsible for the administering and operating the Automated Speed Enforcement Program.

JURISDICTION AND VENUE

5. Pursuant to R.C. 2727.01 et seq., this Court is authorized to grant the injunctive relief sought.
6. Pursuant to R.C. 2727.01, this Court is authorized to declare rights, status, and other legal relations whether or not further relief is or could be claimed.
7. Venue is appropriate in this Court, and this court has jurisdiction over this matter in that a substantial portion of the events that form the basis of this Complaint occurred in Hamilton County.
8. Plaintiffs Pruitt, Warren, Fernandez, Eppstein, Pham, Downs and Coburn are currently facing civil penalties as a result of the operation of the automated traffic enforcement system and have requested an administrative hearing. (See Affidavits filed herein). Plaintiff Cutcher paid a civil penalty as a result of the operation of the automated traffic enforcement program. (See Affidavit filed herein).
9. Plaintiff Linda Pruiett is the wife of Plaintiff Gary Pruiett, and may be harmed by revelation of confidential information protected by privilege. (See Affidavits filed herein).
10. Plaintiff St. Bernard Polishing Company has lost business as a result of the operation of the automated traffic enforcement system. (See Affidavit filed herein).

11. Plaintiff Our Lady of Lavang Vietnamese Catholic Community Church has lost parishioners as a result of the operation of the automated traffic enforcement system. (See Affidavit filed herein).

FACTS

12. On July 10, 2012, the Village Council of Elmwood Village passed Ordinance 9-12 (the "Ordinance," attached as Exhibit 1).

13. The Ordinance created the Automated Speed Enforcement Program.

The Minutes of the July 10, 2012 Council Meeting provide:

ELMWOOD VILLAGE COUNCIL MEETING MINUTES

CONSIDERATION AND PASSAGE OF ORDINANCES AND RESOLUTION:
ORDINANCE 09-12: AN ORDINANCE ADOPTING AN AUTOMATED SPEED ENFORCEMENT PROGRAM AND ESTABLISHING CIVIL PENALTIES FOR AUTOMATED SPEED VIOLATIONS, SUPPLEMENTING THE CODIFIED ORDINANCES OF THE VILLAGE OF ELMWOOD PLACE, OHIO BY ADDING THERETO NEW CHAPTER SEC. 77 TO PROVIDE FOR THE IMPLEMENTATION OF SAID PROGRAM.

Mr. Mathews moved to waive a second and third reading. Mrs. Wiles seconded the motion.
Motion carried 6-0

Mr. Robertson moved to accept Ordinance 09-12 as read. Mr. Mathews seconded the motion.
Motion carried 6-0.

Passed 7/10/12,

A copy of the Minutes is attached as Exhibit 2.

14. The Ordinance added Section 77 to the Village's Codified Ordinances for the implementation

of the Automated Speed Enforcement Program.

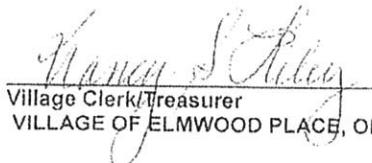
15. The Ordinance provides that "the owner of a vehicle shall be liable for a penalty imposed" for speeding. Section 77.03(a). The Ordinance provides that the recorded images produced by the automated speed monitoring system are *prima facie* evidence of a violation. Section 77.03(d).

16. The Ordinance assumes that the owner of the motor vehicle was operating the motor vehicle at the time of the alleged violation. Section 77.04(d) ("It is *prima facie* evidence that the person registered as the owner of the vehicle . . . was operating the vehicle at the time of the offense.").

17. Ordinance No. 9-12 does not have a certification of the times when and the places where, the ordinance is said to have been published. The certificate provides:

CERTIFICATE

I, Nancy S. Riley, Village Clerk of the Village of Elmwood Place, Ohio, State of Ohio, hereby certify that the foregoing Ordinance No. 9-12 was duly published as provided by Section 30.13 of the Codified Ordinances of the Village of Elmwood Place, Ohio, by posting true copies of same in the most public places designated by Council.



Village Clerk/Treasurer
VILLAGE OF ELMWOOD PLACE, OHIO

18. On July 14, 2012, the Elmwood Place entered into a service agreement with Optotraffic, LLC (the "Service Agreement," attached as Exhibit 3). Optotraffic is a Maryland for-profit corporation that provides automated speed and traffic enforcement systems to local governments.

19. The Service Agreement provides that Optotraffic would operate the Automated Speed Enforcement Program for the Elmwood Village. The operation of Automated Speed Enforcement Program by Optotraffic includes:

- Installation of cameras and equipment to measure speed and produce images of vehicles allegedly violating speed limits;
- Obtaining from BMV records the identity of the owner of vehicles alleged to have violated speed limits;

- Printing and mailing citations, or Notices of Liability, to the owners of vehicles alleged to have violated speed limits;
- Operation of a phone number for recipients of citations to make inquiries and receive information;
- Retention of a collection service to pursue any unpaid fines and fees.

20. In exchange for providing this service to Elmwood Place, Optotraffic receives 40% of all revenue resulting from payments of citations and related fees.

21. Elmwood Place recently passed Ordinance No. 12-12 which announced that anyone requesting an “administrative hearing” will be assessed a \$25 fee, even when that request was made before the law’s passage. A copy of Ordinance 12-12 is attached as “Exhibit 4.”

22. Ordinance No. 12-12, like Ordinance No. 9-12, does not have a certification of the times when and the places where, the ordinance is said to have been published. The certificate provides:

CERTIFICATE

I, Nancy Riley, Village Clerk of the Village of Elmwood Place, Ohio, State of Ohio, hereby certify that the foregoing Ordinance No. 12-12 was duly published as provided by Section 77.07(d) of the Codified Ordinances of the Village of Elmwood Place, Ohio, by
Nancy S. Riley
Village Clerk
VILLAGE OF ELMWOOD PLACE, OHIO

23. Despite R.C. 731.20’s proclamation that “no ordinance shall take effect until the expiration of ten days after the first publication of such notice,” Ordinance No. 12-12 is said to have immediate and even retroactive effect.

24. Elmwood Place began operation of the Automated Speed Enforcement Program on September 1, 2012.

25. On information and belief, speed enforcement signs were not originally placed in view of motorists entering the jurisdictional boundaries of Elmwood Place. The signs are now in the correct locations.
26. One “speed camera” has been placed in a school zone on Vine Street. A second “speed camera” has been placed in a residential neighborhood.
27. The hours of operation for enforcement are twenty four hours per day, seven days per week throughout the year.
28. Vehicles traveling over the posted speed limit are subject to enforcement action. This action is based on evidence captured by the automated speed enforcement system.
29. The owner of a vehicle subject to enforcement action receives a Notice of Liability. The Notice of Liability is a civil, not a criminal, proceeding.
30. On information and belief, Defendant Peskin has stated that the Elmwood Police will not issue Notices of Liability for drivers who are operating a motor vehicle less than five minutes over the speed limit.
 - a. On information and belief, a number of Notices of Liability have been issued for drivers traveling less than five miles over the speed limit, including tickets for only 1 mile over the speed limit.
 - b. The Elmwood Police web page indicates that although the Elmwood Police Department does not anticipate the threshold to fall below 5 MPH over the posted speed limit, “Enforcement thresholds may be adjusted at any time based on the needs of the community, and at the discretion of the Chief of Police.”
31. Notices of Liability are being mailed to the registered owners of vehicles after law enforcement verification and approval.

- a. Plaintiffs Gary Pruiett, Warren, Fernandez, Coburn, Eppstein, Pham and Downs have received notices of liability pursuant to Exhibit 5 attached hereto.
- 32. The Notice of Liability explains how to pay the penalty and how to request a hearing.
- 33. The Village of Elmwood Place has established certain administrative procedures to adjudicate claims by the recipients of Notices of Liability that the recipient is not liable.
- 34. The administrative procedures established by Ordinance are not consistent with the rules governing Mayor's Courts.
- 35. The administrative procedures established by Ordinance are not consistent with the rules of civil procedure or the rules of evidence.
- 36. The procedures set forth in the Ordinance do not provide for proper service of the Notices of Liability, do not permit discovery, and do not permit parties to subpoena witnesses.
- 37. The procedures set forth in the Ordinance permit the admission of hearsay evidence in violation and could require a person to provide testimony against his or her spouse.
- 38. The procedures set forth in the Ordinance do not permit a person who receives a notice of violation and who claims to not be driving the car is not permitted to merely convince the hearing officer that he or she was not the driver. Instead, the owner must provide the name and address of the driver of the vehicle. No other form of evidence can establish the affirmative defense.
- 39. The civil penalty is \$105 and it does not involve points on a driver's record. The fine is enforced like other civil judgments.
- 40. Elmwood Village has stated that it may use collection services and report non-payment to credit agencies.

41. On or about October 3, 2012, Tim Ayers, spokesperson for Optotraffic told FOX19 that if drivers fail to pay the fine and subsequent late fees, drivers will ultimately be turned over to collection agencies.

42. On information and belief, the primary motivation for the Automated Speed Enforcement Program is to generate revenue. A Elmwood Place Village Council Member, Jerald Robertson, told Fox 19 for an October 3, 2012 report: "There's no getting around it, the principal drive behind this is to generate income. We're financially in very bad shape."

- a. An October 10, 2012 article in the Cincinnati Enquirer suggested that Elmwood Place would receive annually over \$400,000 from the operation of the Automated Speed Enforcement Program.
- b. In an October 18, 2012 interview with Fox 19, Defendant Peskin stated that over 6,600 notices of liability have been mailed out and roughly 400 appeals have been filed. As of that date, defendant Elmwood Place had received \$17,000 from the Automated Speed Enforcement Program.
- c. In a November 14, 2012, story, Channel 12 reported that the Mayor of Elmwood Place said that the village has issued more than 13,000 notices of liability and collected \$245,000.

43. Individuals and businesses in Elmwood Place have suffered damages as a result of the operation of the Automated Speed Enforcement Program.

- a. Plaintiff St. Bernard Polishing Company has a parking lot that is adjacent to the Village of Elmwood Place and customers have indicated they will no longer patronize this business due to the Automated Speed Enforcement Program and Plaintiff has suffered lost business and damages as a result thereof.

b. News reports, such as a November 14, 2012 report by Channel 5, have quoted individuals who said that they are no longer driving through Elmwood Place and are boycotting Elmwood Place businesses. The news report also said that residents are bypassing the business district.

44. Individuals have suffered damages because they are unwilling to risk receiving notices of liability and, therefore, are not entering Elmwood.

a. Plaintiff Our Lady of Lavang Vietnamese Catholic Community Church has lost about one-third of its parishioners as parishioners are unwilling to risk receiving notices of liability and therefore, are not entering Elmwood.

45. On information and belief, recipients of Notices of Liability have requested brief continuances of administrative hearings so that statutory and constitutional defenses may be investigated and properly asserted.

CLASS ALLEGATIONS

46. Plaintiff Michael Cutcher proposes to represent a class consisting of all persons who have paid penalties, fees, and other charges imposed under the Automated Speed Enforcement Program.

47. The proposed Plaintiff Class consists of thousands of individuals. Therefore, the Plaintiff Class is so numerous and dispersed that joinder is impracticable.

48. With the help of qualified counsel who are experienced in such litigation, Plaintiff Michael Cutcher is capable of adequately representing the proposed Plaintiff Class for any and all purposes, in that Plaintiff Cutcher, like the other members of the proposed Plaintiff Class, has paid penalties imposed under the Automated Speed Enforcement Program.

There are numerous questions of law and fact common to the Plaintiff Class, including but not limited to the following: whether the Ordinance is invalid and unenforceable because the municipality failed to comply with the statutory requirements; whether the Ordinance is invalid and unenforceable because the Village did not comply with the publication requirements under Ohio law; whether the Certificate on Ordinance 9-12 signed by the Village Clerk failed to comply with R.C. §731.25 because it did not include the times when, and the places where, the Ordinance was posted; whether the Certificate on Ordinance 9-12 signed by the Village Clerk failed to comply with R.C. §731.25 because it did not include a certification that the Ordinance was posted for fifteen days; whether pursuant to R.C. §731.26, the failure of publication is absolute bar to the enforcement of a municipal ordinance; whether, pursuant to R.C. §2720.02, the plaintiffs are entitled to a declaration that the ordinance is invalid and unenforceable; whether the administrative procedures and process used by the Village of Elmwood Place violate the Ohio Constitution's guarantee of "due course of law" by not providing an opportunity for those who receive a Notice of Liability to be heard at a meaningful time and in a meaningful manner; whether the Village has been unjustly enriched by virtue of collecting and retaining the penalties, fees, and other charges that have been paid by Plaintiff Cutcher and the Plaintiff Class that he seeks to represent; whether equity requires that the Village be ordered to disgorge all such payments made to it by Plaintiff Cutcher and the members of the Plaintiff Class; and whether interest on such amounts is also due Plaintiff Cutcher and the members of the Plaintiff Class.

49. In all relevant respects, Plaintiff Cutcher's claims are typical of those of the other Plaintiff Class members in that he, like the other members of the proposed class, was illegally forced to pay a penalty as the result of a deprivation and violation of his rights under the Ohio Constitution.

50. Certification of Plaintiffs' claims for class action treatment is appropriate pursuant to Rules 23(A) and 23(B) of the Ohio Rules of Civil Procedure, in that, under Rule 23(B)(1)(a), the prosecution of separate actions by individual members of the Plaintiff Class would create the risk of inconsistent adjudications with respect to the individual members of the Plaintiff Class that would establish incompatible standards of conduct for defendants regarding the Automated Speed Enforcement Program; under Rule 23(b)(2), in that the Village of Elmwood Place has acted, and threatens to continue acting, in an unconstitutional manner generally applicable to the Plaintiff Class, thereby making appropriate final injunctive and/or corresponding declaratory and/or equitable relief with respect to the class as a whole; and, under Rule 23(b)(3), classwide questions concerning the conduct of the Village of Elmwood Place and the harm thereby inflicted on class members by far predominate over any questions affecting only individual class members and a class action is far superior to any other available method for fairly and efficiently providing restitution to class members.

**COUNT I
(DECLARATORY JUDGMENT)**

51. Plaintiffs repeat and incorporate all the allegations of this Complaint, as if fully set forth herein.
52. There is a dispute between the parties about whether the Ordinance is invalid and unenforceable because Elmwood Village did not comply with the publication requirements under Ohio law.
53. Ohio Law, R.C. §731.20 provides that “A succinct summary of ordinances of a general nature or providing for improvements shall be published . . . before going into operation.”
54. Ohio Law, R.C. §731.25 provides that in municipalities “in which no newspaper is generally circulated” publication of summaries of ordinances and resolutions “shall be accomplished

by posting copies in not less than five of the most public places in the municipal corporation, as determined by the legislative authority, for a period of not less than fifteen days prior to the effective date thereof.”

55. Ohio Law, R.C. §731.25 further provides that “Where such publication is by posting, the clerk shall make a certificate as to such posting, and as to the times when and the places where such posting is done . . . and such certificate shall be prima-facie evidence that the copies were posted as required.”
56. The Certificate on Ordinance 9-12 signed by the Village Clerk, Elmwood Village does not comply with R.C. §731.25 because it does not include the times when, and the places where, the Ordinance was posted.
57. The Certificate on Ordinance 9-12 signed by the Village Clerk, Elmwood Village does not comply with R.C. §731.25 because it does not include a certification that the Ordinance was posted for fifteen days.
58. Pursuant to R.C. §731.26, the failure of publication is absolute bar to the enforcement of a municipal ordinance. This statute provides: “It is a sufficient defense to any suit or prosecution under an ordinance, to show that no publication or posting was made as required by sections 731.21 to 731.25, inclusive, of the Revised Code.”
59. Pursuant to R.C. §2720.02, the plaintiffs are entitled to a declaration that the ordinance is invalid and unenforceable.

COUNT II
(DECLARATORY JUDGMENT – CHAPTER 1905)

60. Plaintiffs repeat and incorporate all the allegations of this Complaint, as if fully set forth herein.

61. R.C. 1905.01 *et seq.* authorizes the Village of Elmwood Place to establish a Mayor's Court to hear and determine any prosecution for the violation of an ordinance of the municipal corporation.
62. The Village of Elmwood Place may only exercise jurisdiction to "hear and decide" a case pursuant to Chapter 1905 of the Revised Code. As a result, all of the administrative hearings on Notices of Liability must be conducted before a Mayor's Court.
63. Chapter 1905 of the Revised Code Authorizes Mayor's Courts to hold only "trials."
64. The Village of Elmwood Place has violated Chapter 1905 of the Ohio Revised Code by instituting separate administrative procedures to review Notices of Liability.
65. The Village of Elmwood Place has violated Chapter 195 because in all proceedings in Mayor's Courts, the rules applicable in other Ohio trial courts must be applied, including the Rules of Evidence and the Rules of Civil Procedure.
66. The procedures used by the Village of Elmwood Place violate the Ohio Rules of Civil Procedure in a number of ways, including:
 - a. The procedures do not provide for proper service of the Notices of Liability as set forth in Rule 4.1.
 - b. The procedures do not permit for discovery as set forth in Rule 26 *et seq.*
 - c. The procedures do not permit parties to subpoena witnesses as set forth in Rule 45.
67. The procedures used by the Village of Elmwood Place violate the Rules of Evidence in a number of ways, including:
 - a. The admission of hearsay evidence in violation of Rule 801.

b. The requirement that a person who was not driving a vehicle, but who has knowledge that his or her spouse was operating the vehicle provide testimony against his or her spouse in violation of Rule 601 and R.C. §2317.02.

68. Pursuant to R.C. §2720.02, the plaintiffs are entitled to a declaration that the ordinance is invalid and unenforceable.

COUNT III
(DECLARATORY JUDGMENT VIOLATION OF OHIO CONSTITUTION)

69. Plaintiffs repeat and incorporate all the allegations of this Complaint, as if fully set forth herein.

70. Section 16, Article I, Ohio Constitution, guarantee that every person injured in his lands, goods, person or reputation shall have remedy by “due course of law.”

71. The administrative procedures used by the Village of Elmwood Place violate the Ohio Constitution’s guarantee of “due course of law” by not providing an opportunity for those who receive a Notice of Liability to be heard at a meaningful time and in a meaningful manner.

72. The administrative procedures used by the Village of Elmwood Place violate the Ohio Constitution’s guarantee of “due course of law” because:

- a. The procedures used by the Village of Elmwood Place do not comply with the Ohio Rules of Civil Procedure.
- b. The procedures used by the Village of Elmwood Place do not comply with the Ohio Rules of Evidence.
- c. The procedures used by the Village of Elmwood Place do not permit a person who receives a Notice of Liability to: (i) conduct discovery; (ii) subpoena witnesses.

- d. The procedures used by the Village of Elmwood Place permit a person to be found liable based on unsubstantiated hearsay evidence.
- e. The procedures used by the Village of Elmwood Place may require a person to either admit to liability or provide the identity of a liable person, including a spouse in violation of spousal immunity.
- f. The procedures used by the Village of Elmwood Place do not adequately permit the recipient of a Notice of Liability to assert affirmative defenses, such as: (i) compliance with the requirement in Chapter 731 of the Ohio Revised Code that municipalities publish its ordinances in a particular manner and for a particular time before those ordinances may be given effect; and (ii) compliance with the requirement of R.C. §4511.094(B)(1) that signs be erected to inform inbound traffic that the local authority utilizes traffic law photo-monitoring devices to enforce traffic laws.
- g. The procedures used by the Village of Elmwood Place assess a \$25 fee to vehicle owners who have requested a hearing without assurances that the fee will be waived or not assessed in the appeal is successful.
- h. The procedures used by the Village of Elmwood Place do not permit the granting of reasonable continuances to counsel for the recipients of Notices of Liability, so that defenses may be adequately investigated and prepared.

73. Pursuant to R.C. §2720.02, the plaintiffs are entitled to a declaration that the ordinance is invalid and unenforceable.

COUNT IV
(Injunctive Relief)

74. Plaintiffs repeat and incorporate all the allegations of this Complaint, as if fully set forth herein.

75. Pursuant to R.C. §731.26, Ordinances 9-12 and 12-12 are invalid and unenforceable.

76. The continued operation of the Automated Speed Enforcement Program is causing substantial, immediate, and continuing damage to plaintiffs:

- a. Plaintiffs the Pruietts, Warren, Fernandez, Coburn, Eppstein, Pham and Downs may suffer damage to their credit report from threatened collection actions by Elmwood Place pursuing collection actions and possibly reporting non-payments to credit agencies.
- b. Plaintiff St. Bernard Polishing Company has suffered a loss of business since the Automated Speed Enforcement Program and this loss of business is attributed to the Automated Speed Enforcement Program.
- c. Plaintiff Our Lady of Lavang Vietnamese Catholic Community Church has parishioners who are reluctant to travel into Elmwood Place for church services out of fear of receiving a Notice of Liability.

77. The Plaintiffs are entitled to a Temporary Restraining Order, and, following a hearing, an Injunction from this Court prohibiting the continued enforcement of the Ordinance.

COUNT V

Equitable Restitution Based On Unjust Enrichment

78. Plaintiffs repeat and incorporate all the allegations of this Complaint, as if fully set forth herein.

79. As a result of the foregoing, the Village of Elmwood Place has been unjustly enriched. The Village should not be permitted to retain unjustly the penalties, fees, and other charges that have

been paid by Plaintiff Cutcher and the Plaintiff Class that he seeks to represent. Equity requires that the Village of Elmwood Place be ordered to disgorge all such payments made to it by Plaintiff Cutcher and the members of the Plaintiff Class as defined herein, plus interest.

Wherefore, Plaintiff seeks the following relief from the Court:

- On Counts I-III, Judgment in favor of the Plaintiffs that the Ordinance is invalid and unenforceable.
- On Count IV, a Temporary Restraining Order, and, following a hearing, an Injunction prohibiting further enforcement of the Ordinance.
- On Count V, equitable restitution of all penalties, fees, and other charges paid by Plaintiff Cutcher and the Plaintiff Class pursuant to the Automated Speed Enforcement Program, plus interest.
- Court costs, other reasonable expenses incurred in maintaining this action, including reasonable attorney's fees.

Respectfully submitted,


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Attorney for Plaintiffs

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.


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IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

GARY PRUIETT et al.

: CASE NO. A1209235

Plaintiffs :
vs.

VILLAGE OF ELMWOOD PLACE :
Defendants :

AFFIDAVIT OF
PLAINTIFF, MICHAEL
CUTCHER

Now comes the affiant, Michael Cutcher, being over the age of eighteen (18), under no legal disabilities, having personal knowledge of all matters asserted herein, and being first duly cautioned and sworn, states as follows:

- 1) I am a resident of Hamilton County, State of Ohio;
- 2) I have received a "notice of liability" from Elmwood that claimed my vehicle was photographed by automated traffic cameras while allegedly speeding;
- 3) The notice indicated that I must pay a fine in the amount of \$105.00;
- 4) As a result of the receipt of liability, I paid the fine or civil penalty to the Village of Elmwood Place;

FURTHER, AFFIANT SAYETH NAUGHT

Michael Cutcher
Michael Cutcher

Subscribed and sworn to before me, a notary public, this 20th day of March, 2013, by
Michael Cutcher.


Notary Public

TIMOTHY R. CUTCHER, ATTORNEY AT LAW
Notary Public, State of Ohio
My Commission Has No Expiration
Date. Section 147.03 O.R.C.

IN THE COURT OF COMMON PLEAS
CIVIL DIVISION
HAMILTON COUNTY, OHIO



GARY PRUIETT, et al,

Plaintiffs

v.

VILLAGE OF ELMWOOD PLACE, et al,

Defendants

Case No.

A 1 2 0 9 2 3 5

Judge:

AFFIDAVITS OF PLAINTIFFS IN
SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER

Now come the Plaintiffs, by and through counsel, and hereby file and attach hereto the Affidavits in Support of the Motion for Temporary Restraining Order filed contemporaneously herein.

Respectfully submitted,

M. K. Allen
Michael K. Allen (0025214)
Michael K. Allen & Associates
810 Sycamore Street, 5th Floor
Cincinnati, Ohio 45202
(513) 321-5297
Fax: (513) 579-8703
e-mail: mikeallen@cinclaw.net
Attorney for Plaintiffs

TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH
2012 NOV 29 P 1:57
FILED

IN THE COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

GARY PRUIETT et al.

: CASE NO. _____

Plaintiffs

vs.

VILLAGE OF ELMWOOD PLACE

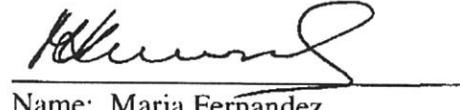
AFFIDAVIT OF
PLAINTIFF, MARJA
FERNANDEZ

Defendants

Now comes the affiant, Marja Fernandez, being over the age of eighteen (18), under no legal disabilities, having personal knowledge of all matters asserted herein, and being first duly cautioned and sworn, states as follows:

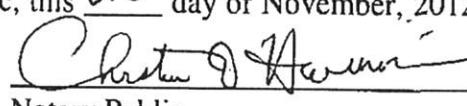
- 1) I am an employee of Procter & Gamble Company ("P&G");
- 2) In order to get to work at P&G, I must travel through the Village of Elmwood Place ("Elmwood") as do many of my coworkers;
- 3) I have received three (3) "notice(s) of liability" from Elmwood that claim my vehicle was photographed by automated traffic cameras while allegedly speeding;
- 4) The notices referred to in paragraph 3 above, state that I am entitled to an "administrative appeal" and may request a hearing accordingly;
- 5) I did request hearings on all three notices and later discovered that I would be charged an additional fee of \$25.00 for each of those hearings;
- 6) Elmwood's automated traffic enforcement has caused a decrease in my productivity as a P&G employee as I have become preoccupied with finding alternative routes and methods for getting to and from work.
- 7) I believe that many of my co-workers have suffered the same decrease in productivity.

FURTHER, AFFIANT SAYETH NAUGHT



Name: Marja Fernandez

Subscribed and sworn to before me, a notary public, this 28 day of November, 2012,
by Marja Fernandez.


Notary Public

CHRISTINE D. HARMON

Notary Public, State of Ohio

My Commission Expires 12-19-2012

**IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

GARY PRUIETT et al. : **CASE NO.** _____

Plaintiffs :
VS.
VILLAGE OF ELMWOOD PLACE :
Defendants :
: AFFIDAVIT OF
: PLAINTIFF, DAVID DOWNS
: AND ST. BERNARD
: POLISHING COMPANY

Now comes the affiant, David Downs, being over the age of eighteen (18), under no legal disabilities, having personal knowledge of all matters asserted herein, and being first duly cautioned and sworn, states as follows:

- 1) I am the owner of St. Bernard Polishing Company located at 5560 Vine St. Cincinnati, Ohio 45216;
- 2) The parking lot of St. Bernard Polishing Company is adjacent to the Village of Elmwood;
- 3) I have owned St. Bernard Polishing Company and been in business at this location for 25 years;
- 4) In the course and scope of my work, I must travel through the Village of Elmwood Place ("Elmwood") as do my customers;
- 5) I have received two (2) "notice(s) of liability" from Elmwood that claim my vehicle was photographed by automated traffic cameras while allegedly speeding;
- 6) The notices referred to in paragraph 3 above, state that I am entitled to an "administrative appeal" and may request a hearing accordingly;
- 7) I did request hearings on all two notices and later discovered that I would be charged an additional fee of \$25.00 for each of those hearings;
- 8) Elmwood's automated traffic enforcement has caused a decrease in my customers as they now refuse to drive through the Village of Elmwood to reach my place of business.

9) I believe that I have suffered a loss of income as a result of the Automated speed Enforcement Program in the Village of Elmwood and I will continue to suffer damages as a result thereof.

FURTHER, AFFIANT SAYETH NAUGHT.



Name: David Downs

Subscribed and sworn to before me, a notary public, this 29th day of November, 2012,
by David Downs.



Notary Public

Notary Public, State of Ohio
My Commission Has No Expiration
Date, Section 147.03 O.R.C.

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

GARY PRUIETT et al.

: CASE NO. _____

Plaintiffs

vs.

VILLAGE OF ELMWOOD PLACE
Defendants

: **AFFIDAVIT OF**
PLAINTIFF, CRAIG COBURN

Now comes the affiant, Craig Coburn, being over the age of eighteen (18), under no legal disabilities, having personal knowledge of all matters asserted herein, and being first duly cautioned and sworn, states as follows:

- 1) I travel through Elmwood Place for work and to perform work for Habitat for Humanity;
- 2) I have received four (4) "notice(s) of liability" from Elmwood including one for the vehicle that I drive to Habitat for Humanity that claim my vehicle was photographed by automated traffic cameras while allegedly speeding;
- 3) The notices referred to in paragraph 3 above, state that I am entitled to an "administrative appeal" and may request a hearing accordingly;
- 4) I did request hearings on all three notices and later discovered that I would be charged an additional fee of \$25.00 for each of those hearings;
- 5) I did request hearings, yet on or about November 20, 2012, I received a Notice of Additional Penalty indicating that an additional fine in the amount of \$30.00 would be levied against me and that if not paid by December 17, 2012, an additional \$60.00 would be levied against me.
- 6) On October 5, 2012, I recorded a video driving down Township and Vine Streets whereby it evidences that no signage was visible warning drivers that speed monitoring by camera was in place.

FURTHER, AFFIANT SAYETH NAUGHT


Name: Craig Coburn

Subscribed and sworn to before me, a notary public, this 28th day of November, 2012,
by Craig Coburn.

Craig Coburn

Notary Public

Notary Public, State of Ohio
My Commission Has No Expiration
Date. Section 147.03 O.R.C.

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

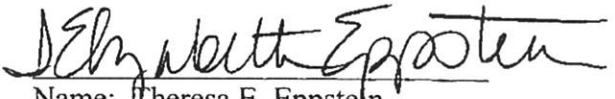
GARY PRUIETT et al. : CASE NO. _____

Plaintiffs :
VS.
: _____
VILLAGE OF ELMWOOD PLACE : **AFFIDAVIT OF**
PLAINTIFF, THERESA E.
EPPSTEIN
Defendants :

Now comes the affiant, Theresa E. Eppstein, being over the age of eighteen (18), under no legal disabilities, having personal knowledge of all matters asserted herein, and being first duly cautioned and sworn, states as follows:

- 1) I am a resident of the Village of Elmwood Place;
- 2) I have received 3 "notice(s) of liability" from Elmwood that claim my vehicle was photographed by automated traffic cameras while allegedly speeding;
- 3) The notices referred to in paragraph 3 above, state that I am entitled to an "administrative appeal" and may request a hearing accordingly;
- 4) I did request hearings on all three notices and later discovered that I would be charged an additional fee of \$25.00 for each of those hearings;
- 5) I did not receive notification and was not aware of the speed monitoring devices until I received my first notice of liability.
- 6) I believe that the addition of the speed monitoring devices to Elmwood Place have interfered with my enjoyment and quality of life as a resident of Elmwood Place.

FURTHER, AFFIANT SAYETH NAUGHT


Name: Theresa E. Eppstein

Subscribed and sworn to before me, a notary public, this 28th day of November, 2012,
by Theresa E. Eppstein.



Notary Public

Notary Public, State of Ohio
My Commission Has No Expiration
Date, Section 147.02 O.B.C.

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

GARY PRUIETT et al.

: CASE NO. _____

Plaintiffs

VS.

VILLAGE OF ELMWOOD PLACE, et al

AFFIDAVIT OF
PLAINTIFF, LINDA PRUIETT

Defendants

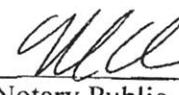
Now comes the affiant, Linda Pruiett, being over the age of eighteen (18), under no legal disabilities, having personal knowledge of all matters asserted herein, and being first duly cautioned and sworn, states as follows:

- 1) I was in attendance at hearings held at Elmwood Mayor's Court on November 17, 2012 where I witnessed the following;
 - a. Parties were called by name as no case numbers had been assigned;
 - b. Elmwood's Police Chief read the allegations against alleged offenders;
 - c. Parties who claimed that signs announcing the Elmwood's traffic cameras were not properly posted were rebutted simply by the Police Chief's claim that signs were posted and ultimately, found liable;
 - d. Parties who claimed that Elmwood's ordinances were not properly published were rebutted simply by the Police Chief's claim that ordinances were published and ultimately, found liable;
 - e. "Witnesses" at the hearings were not placed under oath;
 - f. No representative from the company who installed and maintains Elmwood's automated traffic cameras was present at the hearing;
 - g. Every individual that I witnessed appearing before the court was held liable and charged an additional fee of \$25.00 for having requested a hearing.

FURTHER, AFFIANT SAYETH NAUGHT


Name: Linda Pruiett

Subscribed and sworn to before me, a notary public, this 28th day of November, 2012,
by Linda Pruiett.


Notary Public

MICHAEL K. ALLEN, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration
date. Section 147.03 O.R.C.

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

GARY PRUIETT et al. : CASE NO. _____

Plaintiffs :
vs.
: _____

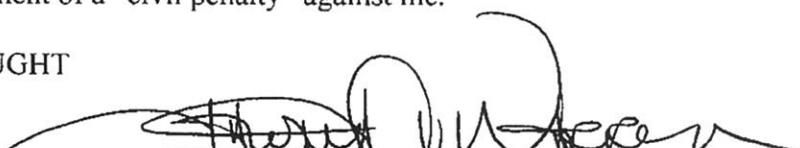
VILLAGE OF ELMWOOD PLACE, et al. : AFFIDAVIT OF
PLAINTIFF, JANNIA WARREN

Defendants : _____

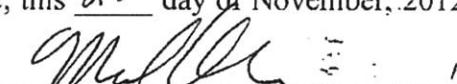
Now comes the affiant, Jannia Warren, being over the age of eighteen (18), under no legal disabilities, having personal knowledge of all matters asserted herein, and being first duly cautioned and sworn, states as follows:

- 1) On or about October 4, 2012, the Village of Elmwood Place ("Elmwood") issued a "notice of liability" to the address listed on my vehicle's registration;
- 2) The "notice of liability" referenced in paragraph 1 above, stated that I must pay to Elmwood, a "civil penalty" in the amount of \$105.00 on or before November 14, 2012;
- 3) On or about October 4, 2012, I no longer lived at the address listed on my vehicle's title;
- 4) Although the "notice of liability" referred to in paragraphs 1 and 2 above was eventually forwarded to my current address, it arrived after the "civil penalty" referenced in paragraph 2 was due;
- 5) As a result of the above facts, I did not receive timely notice from Elmwood and was unable to challenge Elmwood's assessment of a "civil penalty" against me.

FURTHER, AFFIANT SAYETH NAUGHT


Name: Jannia Warren

Subscribed and sworn to before me, a notary public, this 28th day of November, 2012,
by Jannia Warren.


Notary Public

MICHAEL K. ALLEN, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration
date, Section 147.03 O.R.C.

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

GARY PRUIETT et al. : **CASE NO.** _____

Plaintiffs : _____

vs.

VILLAGE OF ELMWOOD PLACE : **AFFIDAVIT OF**
PLAINTIFF, GARY PRUIETT

Defendants : _____

Now comes the affiant, Gary Pruiett, being over the age of eighteen (18), under no legal disabilities, having personal knowledge of all matters asserted herein, and being first duly cautioned and sworn, states as follows:

- 1) The Village of Elmwood Place ("Elmwood") issued a "notice of liability," which claimed that my car had been photographed by an automated traffic camera while speeding and that I was liable for a "civil penalty" of \$105.00;
- 2) I was not driving the vehicle at the time that it was photographed;
- 3) Although the "notice of liability" referenced in paragraph 1 above, informed me that I was entitled to an "administrative appeal," it also stated that I would be required to divulge certain information that is privileged under Ohio law in order to defend myself;
- 3) I did request an "administrative appeal" and only later discovered that I would be charged an additional fee of \$25.00 for having done so;
- 4) I was in attendance at hearings held at Elmwood Mayor's Court on November 17, 2012;
- 5) Although my case was continued on November 17, 2012, I witnessed the following at the hearings referenced in paragraph 4 above:
 - a. Parties were called by name as no case numbers had been assigned;
 - b. Elmwood's Police Chief read the allegations against alleged offenders;
 - c. Parties who claimed that signs announcing the Elmwood's traffic cameras were not properly posted were rebutted simply by the Police Chief's claim that signs were posted and ultimately, found liable;

- d. Parties who claimed that Elmwood's ordinances were not properly published were rebutted simply by the Police Chief's claim that ordinances were published and ultimately, found liable;
- e. "Witnesses" at the hearings were not placed under oath;
- f. No representative from the company who installed and maintains Elmwood's automated traffic cameras was present at the hearing;
- g. Every individual that I witnessed appearing before the court was held liable and charged an additional fee of \$25.00 for having requested a hearing.

FURTHER, AFFIANT SAYETH NAUGHT

Gary Pruett
Name: Gary Pruett

Subscribed and sworn to before me, a notary public, this 28th day of November, 2012,
by Gary Pruett.

GK
Notary Public

MICHAEL K. ALLEN, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration
date. Section 147.03 O.R.C.

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

REV. CHAU M. PHAM, S.V.D. et al. : CASE NO. _____

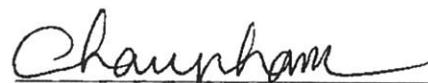
Plaintiffs :
vs.
VILLAGE OF ELMWOOD PLACE :
: AFFIDAVIT OF
: PLAINTIFF,
: REV. CHAU M. PHAM, S.V.D.

Defendants :

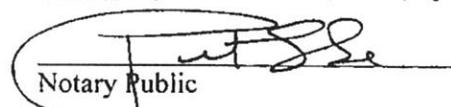
Now comes the affiant, Rev. Chau M. Pham, S.V.D., being over the age of eighteen (18), under no legal disabilities, having personal knowledge of all matters asserted herein, and being first duly cautioned and sworn, states as follows:

- 1) I am the Pastor of the "Our Lady of Lavang Vietnamese Catholic Community" Church located on 314 Township Ave. Cincinnati, Ohio 45216. I live at the Church Rectory located next to the Church.
- 2) The Elmwood's ordinances were not properly published. I received a letter from Elmwood posted on the Church Rectory door on Friday, September 28, 2012. (See attached) The letter said that this was a second notice. We never received the first.
- 3) I made the announcement at Sunday Mass on September 30, 2012. But by this time, it was too late because members of the Church had begun receiving tickets in the mail the day before. Members were receiving multiple tickets on the same day for coming to Church and for leaving Church. I received two citations during this period as well.
- 4) To the best of my knowledge, the signs were not up during this time period.
- 5) Our Church attendance has decreased by a third during this time as our Church members were afraid to come to Church.

FURTHER, AFFIANT SAYETH NAUGHT


Rev. Chau M. Pham, S.V.D.

Subscribed and sworn to before me, a notary public, this 28th day of November, 2012, by Rev. Chau M. Pham, S.V.D..


Notary Public



PETER LONG LE, Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
My Commission has no expiration date
Sec. 147.03 R.C.



Elmwood Place Police Department
300 Maple Street Elmwood Place, Ohio 45216
Office (513) 242-0754 Fax (513) 242-0757
"Serving the Community Since 1890"

Received on 9/28/2012

2nd Notice

NOTICE - IMPLEMENTATION OF ELMWOOD PACE SPEED MONITORING SYSTEMS

The Mayor and Village Council of the Village of Elmwood Place have authorized the use of speed monitoring systems within the Village. The Village of Elmwood Place will start operations of its speed monitoring systems with a 1.5-day warning period on August 31, 2012. The initial location of the Village speed monitoring system will be on the 6200 block of Vine Street. Beginning on September 15th, 2012, the Village of Elmwood Place Police Department will issue \$105.00 civil citations to vehicles that exceed the posted speed limit. The Village of Elmwood Place intends to use speed monitoring systems throughout the Village to improve safety for the Village residents and visitors. This notification was also sent out via call command system if you didn't receive the phone call then your current number is not registered with the system. If you wish to have your phone number added please call 242-0291 and ask to have your number added. Cell phones can also be used with the system. Thank you and please drive safely.